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**Working to end sexual violence in Maryland**

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**Testimony Supporting House Bill 180 or 382 with Amendments,  
and  
Opposing House Bill 149  
Lisae C. Jordan, Executive Director & Counsel  
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The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI) which provides direct legal services for survivors across Maryland. We urge the Judiciary Committee to report favorably on House Bill 180 or 382 with amendments.

**House Bill 382, 180, and 149 – Sexting**

These bills have been re-introduced in the Maryland General Assembly in response to *In re: S.K.*, filed by the Court of Appeals on August 28, 2019. The case involved a teenage student who sent a video message of herself performing oral sex on an unidentified male to two of her close friends. Eventually one of the friends, without permission, chose to distribute the video throughout their high school. The school resource officer became aware of the video clip. When the student met with the resource officer, she justifiably expected the officer would help stop distribution of the video. She felt embarrassed and never intended for anyone other than her friends to see it. Instead, the resource officer viewed the teenager as having committed criminal activity. A police report was filed. Then, in an astonishing failure of prosecutorial discretion, the county State's Attorney office decided to go forward and file a juvenile petition alleging criminal charges against the student under Maryland's child pornography and obscenity laws. Testimony in the Judicial Proceedings Committee last session included that charges were filed in order to get S.K. services.

Confronted with these facts and the prevalence of sexting throughout the country, MCASA advocates for a public policy that appropriately balances two things:

- 1) teenagers who engage in consensual sexting should not be criminally prosecuted; and
- 2) minors should be protected from non-consensual creation or distribution of nude images of themselves.

House Bills 382 is complicated, but carefully crafted attempts to balance these concerns and take some offenses out of the criminal justice system. House Bill 180 has the benefit of simplicity,

but continues to permit prosecution while explicitly limiting this to the juvenile justice system and limiting disposition. Of note, one of the most significant differences between the two bills is that HB180 applies only to images of “oneself”, while HB382 applies to images of oneself or of others (critically, and among other things, the sender must have consent of the others).

Child pornography is a serious crime. The sexual abuse of children by photographing their abuse can never be condoned. But prosecuting consenting teenagers for sexting with other teenagers is not the solution. Instead, in cases where the authorities choose to intervene (which are hopefully rare), a more measured and appropriate disposition should be mandated.

### **House Bill 382 – CINA and CINS**

HB382 applies to both images of oneself and to others if the other people consented and creation of the images does not violate certain sex crimes laws. It would send a child who is under age 13 who engaged in sexting OR who is over age 13 and charged with possession (but not sending, displaying, or publishing) through the CINA system. CINA, a Child in Need of Assistance, is the quasi-civil system used to remove children from their homes after abuse or neglect.

Under HB382, a child *over* 13 who is engaged in sending, displaying, or publishing images, would be sent through the CINS system. CINS, a Child in Need of Supervision, is a system less restrictive than the juvenile justice system, but still focused on misbehaving youth as opposed to families needing assistance. The CINS system is not operational in much of the State, so it is unclear whether this is a practical option.

### **House Bill 180 – Mitigation and Limits on Disposition**

HB180 would make sexting by a minor a mitigating factor in obscenity charges against minors. This bill clarifies that these cases must be in the juvenile justice system, would only result in commitment in extraordinary circumstances, and would never result in a minor being on the sex offender registry. It is, in many ways, the most straight forward alternative. It does not, however, prevent prosecutors from charging teens. It also applies only to images of “oneself”.

### **House Bill 149 – Decriminalization of Distributing Child Pornography – MCASA Opposes**

HB149 would amend the current laws against knowingly promoting, advertising, soliciting, distributing, or possessing with the intent to distribute child pornography so they apply only to people over 18. This bill contains none of the nuance or educational aspects of the other three and would permit minors to distribute images to large groups such as football teams, entire schools, or even to adults. MCASA strongly opposes this bill and expresses concern it could increase production of child pornography and exploitation.

### **Education**

Education has been proven to deter the act of sexting.<sup>1</sup> HB180 and 382 address the issue of education. House Bill 382 would require State Boards of Education to develop and implement

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<sup>1</sup>Joseph Paravecchia, Note, *Sexting and Subsidiarity: How Increased Participation and Education from Private Entities May Deter the Production, Distribution, and Possession of Child Pornography Among Minors*, 10 AVE MARIA L. REV. 235, 242-48 (2011);

programs on sexting for students beginning in the sixth grade. MCASA strongly supports this policy. HB180 permits education in individual cases.

Professor Quince Hopkins and her students at the University of Maryland Law School researched this issue and found a number of already existing curricula that Maryland could easily adopt. They range in cost from about \$50-\$500; alternatively, Texas has developed its own educational program, called “Before You Text” and Maryland could develop a similar program.

<https://txssc.txstate.edu/tools/courses/before-you-text/>

We note that current curricula on consent education include some information on sexting and would be relatively straight forward to expand.

### **Coercion**

HB180 and HB382 include provisions that address concerns that a teen who created these images may be facing pressure to do so. While repealing criminal charges against voluntary teen sexting, both bills also explicitly seek to protect minors from being manipulated or coerced into taking or sending sexually graphic images. HB180 places the burden of proving “that the child was coerced, threatened, or intimidated” on the child by making it an affirmative defense. HB382 excludes certain crimes from the sexting provisions, but these exceptions are not as broad as the language in HB180.

### **Conclusion**

A recent study published in JAMA Pediatrics surveyed more than 110,000 teens and found about 27% of teens have admitted to receiving a sext.<sup>2</sup> This is believable, if not an underestimate, considering most teens have access to a cell phone, and a simple Google search generates over 21 million results for “*how to sext*”. Our laws and those who enforce them should respond with appropriate education and careful assessment of whether there was any pressure or coercion to create images.

Either of the two bills, HB382 or HB180 could be amended to incorporate the strengths of the other proposals and create an appropriate balance. MCASA urges this Committee to do so and to address this issue this session. Some have suggested that a workgroup and summer study is needed, but we respectfully disagree. This is a problem that needs solving now and, while there are different options, this is not an issue of the magnitude of school funding. Teens engage in sexting in Maryland every day. The current law is inadequate and this Committee can and should fix it.

**The Maryland Coalition Against Sexual Assault urges the  
Judiciary Committee to  
report favorably on House Bill 180 or 382 with Amendments**

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<sup>2</sup> Sheri Madigan et al., *Prevalence of Multiple Forms of Sexting Behavior Among Youth: A Systematic Review and Meta-analysis*, 172 JAMA Pediatrics 327–335 (2018)